

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #6	CCRB Case #: 201809920	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/17/2018 7:30 PM	Location of Incident: 168th Street Subway station on the A and 1 train lines	Precinct: 33	18 Mo. SOL 5/17/2020	EO SOL 1/1/2021	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/29/2018 11:04 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Antonio Andrade	16528	950006	TB DT03
2. POF Amy Schenk	18232	959208	TB DT03

Officer(s)	Allegation	Investigator Recommendation
A.POM Antonio Andrade	Discourtesy: Police Officer Antonio Andrade spoke discourteously to § 87(2)(b)	
B.POM Antonio Andrade	Abuse: Police Officer Antonio Andrade interfered with § 87(2)(b)'s use of a recording device.	
C.POM Antonio Andrade	Abuse: Police Officer Antonio Andrade searched § 87(2)(b)'s recording device.	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On November 21, 2018, § 87(2)(b) filed this complaint over the phone with IAB, under original log #18-45745. This case was received at the CCRB on November 29, 2018.

On November 17, 2018, at approximately 7:30 p.m., § 87(2)(b) jumped over the turnstile to enter the 168<sup>th</sup> Street Subway station, in Manhattan, on the A and 1 Train lines. § 87(2)(b) was making an audio recording on his phone prior to interacting with officers and continued to record during the incident. PO Antonio Andrade and PO Amy Schenk stopped § 87(2)(b) § 87(2)(b) told PO Andrade and PO Schenk that he was in a homeless shelter and could not afford his fare. PO Andrade responded, “I don’t give a shit. That doesn’t mean you break the law” (**Allegation A: Discourtesy**, § 87(2)(g) PO Andrade grabbed § 87(2)(b) s phone and asked him why he was recording (**Allegation B: Abuse of Authority**, § 87(2)(g) PO Andrade stopped the recording and deleted a portion of it (**Allegation C: Abuse of Authority**, § 87(2)(g) PO Andrade issued § 87(2)(b) a summons for fare evasion (Board Review 01 and 02). § 87(2)(g), § 87(4-b)

Video was received from the MTA, but it did not capture this incident.

### Findings and Recommendations

#### Allegation (A) Discourtesy: Police Officer Antonio Andrade spoke discourteously to

§ 87(2)(b)

It is undisputed that § 87(2)(b) jumped the turnstile to enter the subway station without paying his fare.

§ 87(2)(b) (Board Review 03) stated that, after being stopped, he explained to PO Andrade and PO Schenk that he was homeless, staying in a shelter, and could not afford his fare. PO Andrade responded, “I don’t give a shit.” § 87(2)(b) was recording audio of this incident using his iPhone.

PO Andrade (Board Review 04) did not remember using profanity, but listened to his GO15 prior to his CCRB interview and acknowledged that he said, “I don’t give a shit,” to § 87(2)(b) § 87(2)(b)

PO Schenk (Board Review 05), who was standing in close proximity to PO Andrade and § 87(2)(b) did not remember PO Andrade using profanity.

At 01:58 in the audio recording provided by § 87(2)(b) of this incident (Board Review 06 and 07), PO Andrade states, “I don’t give a shit. That doesn’t mean you break the law.”

The New York City Police Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. The Department pledges to value human life, respect the dignity of each individual, and render their services with courtesy and civility, Patrol Guide Procedure 200-02, “Mission and Values of the New York City Police Department” (Board Review 08). Uniformed members of the service are to interact with the public in a professional manner, Patrol Guide Procedure 203-09, “Public Contac – General” (Board Review 13).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Antonio Andrade interfered with § 87(2)(b)'s use of a recording device.**

It is undisputed that PO Andrade took § 87(2)(b)'s phone from his hand. § 87(2)(b) stated that PO Andrade grabbed his phone from his hand and asked him why he was recording. PO Andrade trimmed the recording that § 87(2)(b) was making, deleting a portion of their conversation, including when PO Andrade asked § 87(2)(b) why he was recording (discussed below). PO Andrade and PO Schenk asked § 87(2)(b) for his ID. § 87(2)(b) reiterated that he was homeless and could not afford his fare. PO Andrade instructed § 87(2)(b) to provide his ID a second time. § 87(2)(b) went into his pocket and retrieved his ID, which he provided to PO Schenk.

The end of the audio recording provided by § 87(2)(b) captured rusting noises before terminating.

PO Andrade stated that § 87(2)(b) had his phone in his hand when the officers stopped him. PO Andrade did not remember § 87(2)(b) doing anything with his phone other than holding it in his hand in front of his torso. PO Andrade described § 87(2)(b) as being “irate,” but only stated he was “not in a happy mood” and had an “attitude.” Aside from this, there was nothing else about § 87(2)(b)'s behavior that PO Andrade would describe as “irate.” PO Andrade took § 87(2)(b)'s phone out of his hand for tactical purposes because he viewed it as a weapon. § 87(2)(b) was holding the phone in his hand in front of him and “not standing exactly still.” § 87(2)(b) never moved the phone toward PO Andrade. PO Andrade did not remember if he ever asked § 87(2)(b) to get the phone out of his hand or put the phone in his pocket. When asked if there was anything specific about § 87(2)(b) that made him concerned § 87(2)(b) would use his phone as a weapon, PO Andrade stated, “I mean being that he was a little irate is kind of a, to me, kind of, maybe a reason, maybe, he’s a little upset, he might use the phone, you know what I mean. But you shouldn’t have anything in your hands when I stop you because anything could be used, it could be a pen, could be a pencil, could be a phone, could be anything, so to me tactically, as I have been trained to be tactical and be safe, that to me was the safer option.” Aside from the fear that § 87(2)(b) might use the phone as a weapon, there was no other reason that PO Andrade took § 87(2)(b)'s phone from him. PO Andrade did not know if § 87(2)(b) was doing anything on his phone prior to the stop. During the stop, § 87(2)(b) only had the phone in his hand. PO Andrade did not recall if he could see anything on § 87(2)(b)'s screen. PO Andrade did not remember if he saw that § 87(2)(b) was recording. PO Andrade did not remember exactly at what point during the interaction he took § 87(2)(b)'s phone.

PO Schenk stated that § 87(2)(b) was repeatedly putting his phone into his pocket and taking it out while interacting with the officers. § 87(2)(b) also kept touching his body and going into his pockets while trying to find his ID for the officers. PO Schenk did not remember if § 87(2)(b) removed anything from his pockets other than his phone and ID. After the officers told § 87(2)(b) to stop going into his pockets numerous times, PO Andrade took § 87(2)(b)'s phone out of his hand. PO Andrade never told PO Schenk why he took § 87(2)(b)'s phone, but she stated that it was a known safety issue as § 87(2)(b) might have been attempting to record the interaction. PO Schenk was not aware of § 87(2)(b) recording. PO Schenk did not remember if PO Andrade ever told § 87(2)(b) he was not allowed to record.

Individuals have a right to lawfully record police activity. This right extends to individuals in public places, such as streets, sidewalks, and parks, as well as private property in which the individual has the legal right to be present, such as buildings, lobbies, workplaces or an individual’s own property. This right to record police action can be limited for reasons such as

safety of officers or other members of the public, Patrol Guide Procedure 203-29, “When a Member of the Service Encounters an Individual Observing, Photographing, and/or Recording Police Activity” (Board Review 09).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Antonio Andrade searched § 87(2)(b)'s recording device.**

§ 87(2)(g)

As noted above, § 87(2)(b) alleged that PO Andrade clipped the audio recording he made, deleting part of their interaction.

PO Andrade denied that he edited the recording, or did anything on § 87(2)(b)'s phone.

PO Schenk denied that PO Andrade edited the recording, or did anything on § 87(2)(b)'s phone.

Video surveillance from the MTA did not capture the officers' interaction with § 87(2)(b).

§ 87(2)(b)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

[REDACTED]

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
- PO Andrade has been a member of the service for seven years and has been a subject in two complaints and five allegations, none of the prior allegations were substantiated. [REDACTED]

§ 87(2)(g)

- PO Schenk has been a member of the service for three years and has been a subject in two cases and two allegations, none of the prior allegations were substantiated. § 87(2)(g)

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date